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Before the
Federal Communications Commission
Washington, D.C. 20554

DISPATCHED BY

MM Docket No. 95-136

In the Matter of

Amendment of Section 73.606(b) RM-8682
Table of Allotments,
TV Broadcast Stations.
(Sioux Falls, South Dakota)

NOTICE OF PROPOSED RULE MAKING

Adopted: August 18, 1995; Released: August 28, 1995

Comment Date: October 19, 1995

Reply Comment Date: November 3, 1995

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Red River Broadcast Corp. ("petitioner"), proposing the allotment of UHF television Channel 46 at Sioux Falls, South Dakota, as potentially the community's sixth local television broadcast service. If the channel is allotted with cut-off protection, petitioner also requests that its pending application for Channel 36+ be amended to specify operation on Channel 46. Petitioner states its intention to apply for Channel 46 at Sioux Falls, if allotted with cut-off protection.

2. In support of its proposal, petitioner states that on December 27, 1994, Red River Broadcast Corp., licensee of VHF television Station KDLT, Channel 5, Mitchell, South Dakota, filed an application (BPCT-941227KI) for a construction permit for Channel 36+, proposing to operate the station in conjunction with Channel 5. On March 17, 1995, Iowa Teleproduction Center and Company also filed an application (BPCT-950317KM) for Channel 36+ at Sioux Falls. Since the applications are mutually exclusive, petitioner states that the conflict would have to be resolved by the burden and expense of a comparative hearing. Petitioner further states that at the present time, there is no basis upon which to either designate the applications for a comparative hearing or to otherwise resolve these mutually exclusive applications, citing *Bechtel v. Federal Communications Commission*, 10 F.3d 875 (D.C. Cir. 1993). Petitioner asserts that the allotment of Channel 46 at Sioux Falls can be made in compliance with the Commission technical requirements and its policies for protecting future advance television ("ATV") allocations.¹

3. Moreover, petitioner contends that since 1982, the Commission's policy has been to add a second channel to a community where the only vacant channel is subject to a comparative hearing, if the second channel can be added consistent with other allotment policies, citing *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982). Thus, petitioner declares that in identical situations where, as here, competing applications are filed for the only vacant channel, the Commission has allotted another channel to eliminate the need for a hearing, citing *Cope-land, Kansas*, 5 FCC Rcd 7682 (1990); *Roseburg, Oregon*, 6 FCC Rcd 4369 (1991); and *Albion, Nebraska*, 10 FCC Rcd 3183 (1995), *aff'd*, FCC 95-265 (June 27, 1995). In these proceedings, petitioner asserts that the Commission has also allowed the applicant to apply for the new channel without being subject to cut-off procedures as long as (a) no expressions of interest in the new channel are filed in the rule making; or (b) if such expressions are filed, there is at least one additional channel which can be allotted to accommodate those parties. If there are additional expressions of interest, petitioner advises that Channel 64 is available at Sioux Falls. Accordingly, petitioner claims that the allotment of Channel 46, with cut-off protection, will enable the applicants to pursue their applications promptly, expediting authorization of new television service to Sioux Falls, and thus providing the public with access to additional stations.

4. We believe petitioner's proposal warrants consideration because the allotment of Channel 46 at Sioux Falls, South Dakota, could potentially provide the community with its sixth local television broadcast service. In addition, the proposed allotment of Channel 46 at Sioux Falls would accommodate both applicants' request for a television channel and avoid a comparative hearing for Channel 36+. An engineering analysis has determined that Channel 46, with zero offset, can be allotted to Sioux Falls in compliance with the Commission's minimum distance separation requirements at city reference coordinates.² Since it appears that there is an additional UHF television channel available for other expressions of interest at Sioux Falls, we shall propose to allow petitioner to amend its application to specify operation on Channel 46 in lieu of Channel 36+, with cut-off protection.

5. Accordingly, we shall seek comments on the proposed amendment of the TV Table of Allotments, Section 73.606(b) of the Commission's Rules, for the community listed below, to read as follows:

City	Channel No.	
	Present	Proposed
Sioux Falls,	11, 13+, 17-,	11, 13+, 17-,
South Dakota	*23, 36+	*23, 36+, 46

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we

¹ Sioux Falls is over 300 kilometers from the Minneapolis-St. Paul, Minnesota freeze area, and thus is not subject to the ATV freeze. See *Advanced Television Systems and Their Impact on the Existing Television Broadcast Service*, 52 Fed Reg. 28346, July 29,

1987.

² The coordinates for Channel 46 at Sioux Falls are North Latitude 43-32-30 and West Longitude 96-44-00.

note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before **October 19, 1995**, and reply comments on or before **November 3, 1995**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

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Crowell & Moring
1001 Pennsylvania Ave., N.W.
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(Counsel for Petitioner)

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Allotments, Section 73.606(b) of the Commission's Rules. *See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding, contact Sharon P. McDonald, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (*See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (*See* Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.